



September 6, 2002

Mr. Ken Johnson
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76701-2570

OR2002-4999

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168281.

The Waco Police Department (the "department") received a request for "[a]ny and all complaints, offences [sic] or other statements made by" a named individual. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially we note that report 96-020213 was not filed by the individual named in the request. We therefore find that this report falls outside the scope of the request, and we do not address it in this ruling.

You have also submitted an accident report concerning the individual named in the request. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 550.065(b) of the Transportation Code states that it "applies only to information that is held by the [Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under [chapter 552] or Section 601.004 [of the Transportation Code.]" This section states that, except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4) (codifying Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5). Under this provision, a governmental

entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the submitted "Texas Peace Officer's Accident Report" form pursuant to section 552.101 in conjunction with section 550.065(b).

Section 552.101 also encompasses common law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. With certain types of intimate and embarrassing offenses, this office has previously concluded that, generally, only information that identifies or tends to identify the victim must be withheld under section 552.101 in conjunction with common law privacy. *See, e.g.*, Open Records Decision Nos. 393 (1983), 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.-El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment is highly intimate or embarrassing information and public does not have legitimate public interest in such information). However, in instances where the requestor knows the identity of the victim of such an offense, the governmental body is required to withhold the entire report.

In this instance, the requestor has provided the name of an individual who was the alleged victim of an intimate or embarrassing offense. We therefore believe that withholding only identifying information from the requestor would not preserve the victim's common law right to privacy. Consequently, pursuant to section 552.101 and common law privacy, the department must withhold from the requestor those submitted offense reports that we have marked.

We now address your arguments regarding the remaining responsive report, which you assert is excepted under section 552.108. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov't Code* §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that this report pertains to a pending criminal prosecution. Based upon this representation, we conclude that the release of the remaining report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ.

App.-Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense. Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. You have indicated the information that you intend to release from the remaining report, but it does not include a detailed description of the offense. *Houston Chronicle* requires you to include a detailed description of the offense report in the front page information that you release. Although section 552.108(a)(1) authorizes you to withhold the remainder of this report from disclosure, you may choose to release all or part of it that is not otherwise confidential by law. See Gov't Code § 552.007.

In summary, the offense reports that we have marked must be withheld pursuant to section 552.101 and the common law right of privacy. The department must also withhold the "Texas Peace Officer's Accident Report" under section 552.101 as information that is confidential by law. The remaining responsive offense report may also be withheld under section 552.108. Basic information from this report must be released, including a detailed description of the offense.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

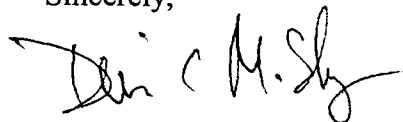
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 168281

Enc. Submitted documents

c: Mr. Rick Perkins
2418 South Dewey
Sherman, Texas 75090
(w/o enclosures)